

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA (ERIE)

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U.S. DISTRICT COURT

UNITED STATE OF AMERICA)
v.)
JOHN COOLEY,) CIVIL ACTION NO. _____
DEFENDANT.) CRIMINAL INDICTMENT
_____) NO. 1:02-cr-00040-SJM-1

DEFENDANT'S AMENDMENT TO DEFENDANT'S § 2255.

Defendant John Cooley, respectfully requests that this Honorable Court will allow the Defendant Cooley to amend his pending Motion Under 28 U.S.C. § 2255 to Vacate, or Correct Sentence by a Person in Federal Custody ("Rule 2255 Motion") based on the recent United States Supreme Court decision in *Cunningham v. California*, 164 L.Ed. 2d. 47 (2006).

In *Cunningham supra*, the U.S. Supreme Court reaffirmed the "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." quoting *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

The "statutory maximum" is not defined by the maximum penalty that may be imposed based on aggravating facts or factors. "(T)he statutory maximum...is the maximum sentence that a judge may imposed solely on the basis of facts reflected in the jury

verdict or admitted by the defendant." A sentence exceeds the statutory maximum if it must be based on "additional findings" by the court. Blakely, *supra*, 124 S.Ct. at 2537 (emphasis in original).

In Blakely, *supra*, the defendant pled guilty to second degree kidnapping involving the use of a firearm. the state's sentencing guidelines authorized a 53-month statutory maximum sentence as a standard range for this offense. The trial court imposed a more sever sentence based on its finding that the defendant acted with deliberate cruelty-an aggravating factor under the state sentencing guidelines.

The United States Supreme Court reversed the defendant's sentence because this aggravating factor was not proven to a jury or admitted by the defendant. The defendant disputed that he acted with deliberate cruelty, so the trial court could not increase his sentencing range without a supportive factual finding by a jury.*Id.*

Several federal district courts have already recognized that this same analysis must be applied to the federal Sentencing Guidelines. The trial courts cannot make factual findings that increase a defendant's offense level. the federal Sentencing Guidelines are unconstitutional unless aggravating sentencing factors are found by a jury or admitted by a defendant.^{1/}

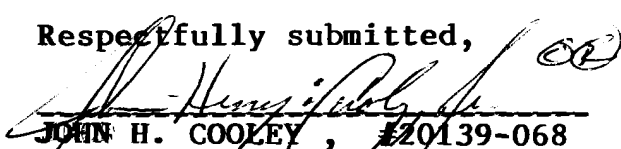
^{1/} See Cunningham v. California, 164 L.Ed.2d. 47 (2007)

In the case at bar, Defendant Cooley was convicted of a conspiracy to possess with intent to distribute Fifty (50) grams or more of cocaine base. Defendant never admitted to possession or distribution of any quantity of cocaine base, and no quantity was proven based on foreseeability to the jury.

Under these circumstances, the Court may only allow the defendant to amend his §2255 motion once before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar. Defendant further contends that his offense level cannot be enhanced based on an unproven allegation of cocaine base. Id.

Dated this 9th day of APRIL, 2007

Respectfully submitted,


JOHN H. COOLEY, #20139-068
UNITED STATES PENITENTIARY-HAZELTON
P.O. BOX 2000
BRUCETON MILLS, WEST VIRGINIA 26525

CERIFICATE OF SERVICE

I certify that on APRIL 9th, 2007 I mailed a copy of the Defendant's Amendment To Defendant's § 2255 motion to Vacate Sentence by first class mail to **CHRISTIAN A. TRABOLD, UNITED STATES ATTORNEY'S OFFICE, 100 STATES ST., #302 ERIE, PA 16507.**


JOHN H. COOLEY

APRIL 9th, 2007

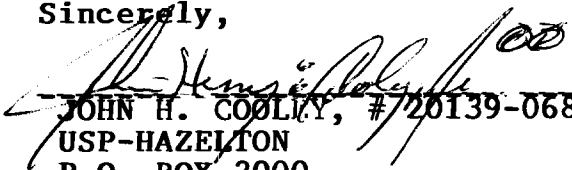
Dear Clerk of the Court:

Could you please file the enclosed Motion to Amend within your court as soon as possible.

In closing, I would like to thank you for your time and attention into this matter.

JHC/jhc
enclosures

Sincerely,


JOHN H. COOLEY, #20139-068
USP-HAZELTON
P.O. BOX 2000
BRUCETON MILLS, WEST VIRGINIA 26525